STATE OF CALIFORNIA

Amold Schwarzenegger, Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364 SACRAMENTO, CA 95814 (916) 653-6251 Fax (916) 657-5390 Web Site www.nahc.ca.gov. e-mail: ds_nahc@pacbell.net



December 29, 2009

Mr. Tom Alo

CALIFORNIA REG. WATER QUALITY CONTROL BOARD - REGION 9

9174 Sky Park Court, Suite 100 San Diego, CA 92123

Sent by FAX to: 858-571-6972

No. of Pages: 4

Re: <u>SCH#2009111098</u> CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR)) for the Nassco/BAE Shipyard Sediment Site, San Diego located in the San Diego Bay area near National City: San Diego County, California

Dear Mr. Alo:

The Native American Heritage Commission (NAHC) is the state 'trustee agency' pursuant to Public Resources Code §21070 for the protection and preservation of California's Native American Cultural Resources.. (Also see Environmental Protection Information Center v. Johnson (1985) 170 Cal App. 3rd 604) The California Environmental Quality Act (CEQA - CA Public Resources Code §21000-21177, amended in 2009) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the California Code of Regulations §15064.5(b)(c)(f) CEQA guidelines). Section 15382 of the CEQA Guidelines defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. To adequately assess the project-related impacts on historical resources, the Commission recommends the following.

The Native American Heritage Commission did perform a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural resources were not identified within one-half mile of the APE. Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Enclosed are the names of the nearest tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for this purpose, that may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We recommend that you contact persons on the attached list of Native American contacts. A Native American Tribe or Tribal Elder may be the only source of information about a cultural resource.. Also, the NAHC recommends that a Native American Monitor or Native American culturally knowledgeable person be employed whenever a professional archaeologist is employed during the 'Initial Study' and in other phases of the environmental planning processes.. Furthermore we suggest that you contact the California Historic Resources Information System (CHRIS) at the Office of Historic Preservation (OHP) Coordinator's office (at (916) 653-7278, for referral to the nearest OHP Information Center of which there are 11...

Consultation with tribes and interested Native American tribes and individuals, as consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C. 4321-43351) and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 [f)]et se),



36 CFR Part 800.3, the President's Council on Environmental Quality (CSQ; 42 U.S.C. 4371 et seg) and NAGPRA (25 U.S.C. 3001-3013), as appropriate.

Lead agencies should consider avoidance, as defined in Section 15370 of the California Environmental Quality Act (CEQA) when significant cultural resources could be affected by a project. Also, Public Resources Code Section 5097.98 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery. Discussion of these should be included in your environmental documents, as appropriate.

The authority for the SLF record search of the NAHC Sacred Lands Inventory, established by the California Legislature, is California Public Resources Code §5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code §6254.10). The results of the SLF search are confidential. However, Native Americans on the attached contact list are not prohibited from and may wish to reveal the nature of identified cultural resources/historic properties. Confidentiality of "historic properties of religious and cultural significance" may also be protected the under Section 304 of the NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C, 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APE and possibly threatened by proposed project activity.

CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens.

Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony.

Again, Lead agencies should consider avoidance, as defined in \$15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation

Please feel free to contact me at (916) 653-6251 if you have any questions.

Dave Singleton Program Analyst

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Attachment: List of Native American Contacts

Cc: State Clearinghouse

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Native American Contacts San Diego County December 29, 2009

Barona Group of the Capitan Grande Edwin Romero, Chairperson 1095 Barona Road Diegueno Lakeside , CA 92040 sue@barona-nsn.gov (619) 443-6612 619-443-0681

La Posta Band of Mission Indians Gwendolyn Parada, Chairperson PO Box 1120 Diegueno Boulevard CA 91905 (619) 478-2113 619-478-2125

San Pasqual Band of Mission Indians Allen E. Lawson, Chairperson PO Box 365 Diegueno Valley Center, CA 92082 (760) 749-3200 (760) 749-3876 Fax

Santa Ysabel Band of Diegueno Indians Johnny Hernandez, Spokesman PO Box 130 Diegueno Santa Ysabel, CA 92070 brandietaylor@yahoo.com (760) 765-0845 (760) 765-0320 Fax Sycuan Band of the Kumeyaay Nation
Danny Tucker, Chairperson
5459 Sycuan Road Diegueno/Kumeyaay
El Cajon CA 92021
ssilva@sycuan-nsn.gov
619 445-2613
619 445-1927 Fax

Viejas Band of Mission Indians
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Alpine CA 91903
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(619) 445-3810
(619) 445-5337 Fax

Kumeyaay Cultural Historic Committee Ron Christman 56 Viejas Grade Road Diegueno/Kumeyaay Alpine , CA 92001 (619) 445-0385

Jamul Indian Village
Kenneth Meza, Chairperson
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Jamul , CA 91935
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(619) 669-48178 - Fax

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106, and federal NAGPRA.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009111099; CEOA Notice of Preparation (NOP); draft Environmental Report (DEIR) for the Nassco/BAE Shipyard Sediment Site, San Diego; located in the San Diego Bay area; San Diego County, California.

Diegueno/Kurneyaay

Native American Contacts San Diego County December 29, 2009

Mesa Grande Band of Mission Indians Mark Romero, Chairperson P.O Box 270 Diegueno Santa Ysabel, CA 92070 mesagrandeband@msn.com (760) 782-3818 (760) 782-9092 Fax

Kumeyaay Cultural Repatriation Committee Steve Banegas, Spokesperson 1095 Barona Road Diegueno/Kumeyaay Lakeside , CA 92040 (619) 742-5587 (619) 443-0681 FAX

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(619) 478-9505 (619) 478-5818 Fax

Kwaaymii Laguna Band of Mission Indians Carmen Lucas P.O. Box 775 Diegueno -Pine Valley CA 91962 (619) 709-4207

Inaia Band of Mission Indians Rebecca Osuna, Spokesperson 309 S. Maple Street Diegueno Escondido CA 92025 (760) 737-7628 (760) 747-8568 Fax

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